



Russian authorities failed to ensure effective review of allegations about serious irregularities in elections in St Petersburg in 2011

The case concerned allegations of serious irregularities in counting of votes in St Petersburg for the city and federal elections of December 2011, as well as a lack of effective review of those allegations. According to the applicants, the results for dozens of electoral precincts had been distorted in recounts which largely favoured the ruling party, *Yedinaya Rossiya* (ER).

In today's Chamber judgment¹ in the case of [Davydov and Others v. Russia](#) (application no. 75947/11) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights as concerned nine of the applicants, in so far as they had been denied effective examination of their complaints about serious irregularities in the procedure in which the votes had been recounted.

The Court found in particular that the applicants had made an arguable claim that the fairness of the elections both to the St Petersburg Legislative Assembly and the State Duma in a number of precincts had been seriously compromised by the procedure in which votes had been recounted. In particular, the extent of recounting (it concerned over 50,000 votes cast), unclear reasons for ordering it, lack of transparency and breaches of procedural guarantees in carrying it out, as well as the results whereby the ruling party gained votes by large margins (notably, no less than one fifth of votes cast had been reassigned in favour of the ruling party, *ER*), strongly supported the suspicion of unfairness. That complaint had been raised before different State authorities which could, at least potentially, be regarded as effective and accessible remedies. However, none of the avenues employed by the applicants had given them the opportunity for a review of their complaints which would provide sufficient guarantees against arbitrariness. In particular, the courts were empowered to consider complaints from the participants of the electoral process, to obtain and examine relevant evidence and, if the irregularities were sufficiently serious, to overturn the decisions of the relevant electoral commissions. Yet, the courts had generally refrained from going into the substance of the applicants' allegations, limiting their analysis to trivial questions of formalities and ignoring evidence pointing to serious and widespread breaches of procedure and transparency.

Principal facts

The applicants, 11 Russian nationals who live in St Petersburg, all took part in the elections held simultaneously on 4 December 2011 at city and federal level: namely to elect deputies to the Legislative Assembly of St Petersburg as well as to the State Duma of the Russian Federation. All of the applicants were registered voters; some were also candidates for *Spravedlivaya Rossiya* (SR), one of the opposition parties; and others were members of the electoral commissions or observers.

Elections at both levels were based on proportional representation by party list, meaning that the electorate voted for lists of candidates proposed by political parties. Vote counting and tabulation at the 2011 elections was managed in St Petersburg by commissions at three different stages: precinct,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

territorial and city. Thus, voting initially took place at polling stations in a precinct. The precinct commission then counted the votes and drew up results sheets, called “protocols”, which were sent to the territorial commission. The relevant territorial commission subsequently prepared a consolidated table of results of the voting by electoral division under its jurisdiction. Lastly, these results were sent to the St Petersburg City Electoral Commission which made a final calculation and published the results on its website.

The applicants contested the official results of the elections in 100 precincts. They complained, both to the domestic authorities and to the European Court, of various kinds of manipulation during the elections and vote counting. They all alleged in particular that the protocols at the precinct stage were replaced with new ones containing different figures at the territorial stage, which in general inflated the results for ER and diminished the results for other parties, notably SR, the Communist Party (KPRF) and *Yabloko*. In support of their allegations, the applicants submitted copies of the protocols drawn up at precinct level which contained different figures from those officially published, and other relevant evidence.

All the applicants’ attempts to obtain a review of the elections at domestic level were unsuccessful. In particular, they lodged complaints with the City Electoral Commission, the prosecutor’s office (requesting that an investigation be brought into electoral fraud) and initiated separate court proceedings at all levels of the judicial system. The City Electoral Commission did not consider the complaints in substance. The prosecutor’s office found that the matter fell into the domain of the relevant courts, and decided not to open criminal investigations. The applicants in their personal capacity as voters, members of the electoral commissions, and branches of political parties also brought complaints before the Supreme and Constitutional Courts, the Saint Petersburg City Court and district courts. In 2013 the Constitutional Court reversed the practice whereby only parties could bring complaints about the results of elections in constituencies, granting the right of appeal also to individual voters. Before that, individual standing of voters to challenge the results in constituencies was not secured.

In all proceedings initiated by the applicants and the parties concerned in 2011 and 2012, the courts endorsed the electoral commissions’ decisions, limiting their review to essentially procedural aspects of the case (for example, whether the City Commission had properly notified the parties’ representatives of a hearing) and dismissing the applicants’ evidence on mostly formal grounds.

The Government, providing a number of copies of official documents and composite tables with information about the procedure and results of the recounts in the precincts contested by the applicants, argued that the applicants had submitted documents with procedural deficiencies, which made them invalid. They accepted that the results in 48 precincts had been subject to recount; however argued that the recount procedure had been in accordance with the law and its results were not to the detriment of the opposition parties to the extent alleged by the applicants. They also stressed that the applicants’ complaints had been fully examined by the competent domestic authorities.

Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1 (right to free elections) and Article 13 (right to an effective remedy), the applicants argued that the recounts in question, producing different results for dozens of precincts, constituted a major breach of the right to free elections and that they received no effective review of this complaint.

Also relying on Article 34 (right of individual petition), two of the applicants (Mr Davydov and Ms Andronova) made allegations about the authorities trying to dissuade them from continuing with their applications before the European Court.

The application was lodged with the European Court of Human Rights on 8 December 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Branko Lubarda (Serbia),
Luis López Guerra (Spain),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Two of the applicants requested to withdraw their applications. The Court, finding no reasons requiring further examination of their complaints, therefore decided to strike those two applicants out of the list of applicants in the present case.

[Article 3 of Protocol No. 1 \(right to free elections\)](#)

The Court explained that relatively mild level of scrutiny would apply to the technical stage of vote counting and tabulation, which constitutes a part of the right to free elections. Due regard must be given to the fact that this is a complex process, with many persons involved at several levels. A mere mistake or irregularity at this stage would not, *per se*, signify unfairness of the elections, if the general principles of equality, transparency, impartiality and independence of the electoral administration are complied with. The concept of free elections would be put at risk only if there is evidence of procedural breaches that would be capable of thwarting the free expression of the opinion of the people, for instance through gross distortion of the voters' intent; and where such complaints receive no effective examination at the domestic level.

Aware of the limits of its fact-finding role in this type of case, the Court decided to focus on what was not in dispute by the parties. First, the results in almost half the initially challenged precincts in the elections to the St Petersburg Legislative Assembly (and three of the four challenged in the Duma elections) were declared void by the territorial commissions and recounts (concerning over 50,000 votes cast) were ordered. These decisions were summarily and similarly worded, making it difficult to assess whether they were justified. The Court found it difficult to accept, without any additional explanation, that the scope of errors and irregularities in almost half the electoral precincts concerned had been such that their results should have been declared void by the higher commissions and assessed anew, with widespread discrepancies between these two counts. The recounting of votes on such a massive scale in itself pointed to a serious dysfunction in the electoral system and threw doubts on the fairness of the entire process.

Secondly, as concerned the procedure and guarantees of the recounts, the Court noted that: the composition of the territorial commissions which had taken the decisions to conduct recounts excluded the members from both opposition parties in a majority of cases; not all the members of the precinct commissions concerned had been notified of the decisions taken and thus had not taken part in the recounting; the recounts at the territorial commissions had been carried out in such a short time (for example 45 minutes for 6,600 ballot papers in one territorial commission) that it placed in question their ability to comply with the complex procedural requirements of the national legislation; and the members of the opposition parties had been systematically absent from the recount process both at the territorial and precinct levels.

Thirdly, as a result of the recounts the Government party had overwhelmingly gained and the opposition parties had lost. The information provided by the Government in a large sample of

constituencies showed that as a result of recounts more than one fifth of votes cast had been reassigned in favour of the ruling party.

Fourthly and moreover, the applicants' allegations were indirectly supported by an independent and credible international observer mission (the OSCE), which had identified the counting and tabulation of the results as the most problematic stages of the elections in question.

In view of these undisputed facts, the Court found that the applicants had presented, both to the domestic authorities and to the Court, an arguable claim that the fairness of the elections in the constituencies concerned had been seriously compromised by the procedure in which the votes had been recounted. Such irregularity could lead to gross distortion of the voters' intent, in respect of each of the precincts challenged by the applicants. Such complaints should have been effectively examined by the domestic authorities.

The applicants' complaints had been raised before different State authorities that could, at least potentially, be regarded as effective and accessible remedies. However, none of the avenues employed by the applicants had given them the opportunity for a review of their complaints providing sufficient guarantees against arbitrariness. As concerned the electoral commissions, the Court found that this remedy had proved ineffective, since the City commission had refused to consider the complaints in substance. As concerned the avenue of bringing a criminal investigation, the prosecutor's office had been at one in the view that the matter fell into the domain of the courts competent to deal with complaints about decisions by the electoral commissions. Lastly, as concerned judicial review, the courts were empowered to consider complaints from the participants of the electoral process, to obtain and examine relevant evidence and, if the irregularities were sufficiently serious, to overturn the decisions of the relevant electoral commissions. Wherever their standing had been allowed, the applicants (or the political parties concerned) had put their complaints about the recount procedure and the ensuing results before the courts. Nevertheless, the courts generally refrained from going into the substance of the allegations, limiting their analysis to trivial questions of formalities and ignoring evidence pointing to serious and widespread breaches of procedure and transparency. In essence, they had endorsed the electoral commissions' decisions, without engaging in any real examination of the reasons for the applicants' challenges. Dismissing the Government's objection of non-exhaustion of domestic remedies, the Court found that none of the avenues employed by the applicants had given them the opportunity for a review of their complaints which would provide sufficient guarantees against arbitrariness.

In conclusion, there had been a violation of Article 3 of Protocol No. 1 to the Convention in respect of nine of the applicants, in so far as they had been denied effective examination of their complaints about serious irregularities in the procedure in which the votes had been recounted. The Court further concluded that it was not necessary to examine separately the applicants' remaining complaints under Article 3 of Protocol No. 1 to the Convention or under Article 13.

[Article 34 \(right of individual petition\)](#)

The Court rejected two applicants' allegations that any undue pressure had been put on them as a result of their application before the Court. The State had not failed to comply with its obligations under Article 34 not to hinder in any way these two applicants' right to bring complaints before the European Court.

[Article 41 \(just satisfaction\)](#)

The Court held that Russia was to pay four of the applicants 7,500 euros (EUR) each in respect of non-pecuniary damage. The other applicants did not seek any award. EUR 8,000 was awarded for the applicants' costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.